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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-357

No. COA21-727

Filed 17 May 2022

Gaston County, Nos. 17 JT 326-27, 19 JT 92

IN THE MATTER OF: S.G.A.R.B., H.D.B., & T.U.B.

Appeal by Respondent-Appellant Mother from orders entered 31 August 2021 by Judge John K. Greenlee in Gaston County District Court. Heard in the Court of Appeals 27 April 2022.

Elizabeth Myrick Boone for Petitioner-Appellee Gaston County Department of Health and Human Services.

Richard Croutharmel for the Respondent-Appellant Mother.

Stacie C. Knight for the Guardian ad Litem.

JACKSON, Judge.

¶ 1 Respondent-Mother ("Mother") appeals from the trial court's orders terminating her parental rights to S.G.A.R.B. ("Sarah"), H.D.B. ("Heather"), and T.U.B. ("Tina")[1] (collectively "the juveniles"), three of her minor children. After careful review, we affirm.

[1] We use pseudonyms to refer to the juveniles discussed in this opinion to protect the juveniles' privacy and for ease of reading. *See* N.C. R. App. P. 42(b).

I. Background

¶ 2 The Gaston County Department of Health and Human Services ("DSS") began working with Mother in 2017 due to concerns over her mental health and substance abuse issues as well as domestic violence with R.B., the juveniles' father.[2] Heather was born in September 2017 and both she and Mother tested positive for cocaine and suboxone after birth. Thereafter, DSS received reports that Mother was buying suboxone illegally, had left her safety placement, failed to show up for drug screens, continued engaging in domestic violence with R.B., was not giving an older child his medication, and had truancy issues for several of her older children. On 4 December 2017, DSS filed a juvenile petition alleging that Sarah, Heather, and Mother's five older children[3] were neglected and dependent. DSS was granted nonsecure custody of all the children.

¶ 3 On 5 July 2018, the trial court filed an order adjudicating Sarah and Heather neglected and dependent. On 14 September 2018, the trial court filed a disposition order directing Mother to follow DSS's recommended case plan which included the following components: refrain from using/abusing all illegal/mind altering substances; complete a mental health and substance abuse assessment and follow

[2] R.B.'s parental rights to the juveniles were also terminated but he did not appeal.

[3] At this time, the older children's cases are ongoing or resulted in permanency plans other than termination of parental rights. These children are not parties to this appeal.

any recommendations; complete domestic violence counseling; submit to drug screens as requested; complete parenting classes; obtain and maintain safe, appropriate, and stable housing; attend visitations with the juveniles, demonstrate effective parenting skills, and display appropriate communication skills; sign all necessary consents; and refrain from criminal activity.

¶ 4 The trial court conducted review hearings on 18 September 2018, 15 January 2019, and 26 March 2019 and never found Mother had made reasonable progress toward reunification. Additionally, at the 15 January 2019 hearing, the trial court changed the primary permanency plan from reunification to adoption for Sarah and Heather on the basis that Mother had not provided proof of housing and employment, completed a mental health and substance abuse assessment, submitted to drug screens, or completed parenting and domestic violence classes. Further, at the 26 March 2019 hearing, the trial court ordered Mother's visitations with Sarah and Heather to be ceased due to lack of participation on her case plan.

¶ 5 On 2 April 2019, Mother gave birth to Tina. DSS filed a juvenile petition alleging that Tina was neglected and dependent on the basis that Mother had tested positive for cocaine during her pregnancy and had yet to substantially comply with her case plan. DSS was granted nonsecure custody of Tina. An amended juvenile petition was filed on 18 April 2019 after Tina's cord blood tested positive for cocaine. The trial court subsequently adjudicated Tina neglected and dependent and filed a

disposition order directing Mother to comply with her case plan to effectuate reunification.

¶ 6 At a review hearing for Tina on 4 August 2020, the trial court found that while Mother had completed a drug education course and obtained employment, she tested positive for cocaine via hair follicle drug screens in May and July 2020. Based on these and other findings, the trial court changed the primary permanency plan for Tina from reunification to adoption but allowed Mother's visitations with her to continue.

¶ 7 At a review hearing held on 10 November 2020 for the juveniles, the trial court found that Mother tested positive for cocaine in August 2020. Thereafter, on 29 March 2021, DSS filed petitions for the termination of parental rights regarding Sarah, Heather, and Tina, alleging grounds for termination pursuant to N.C. Gen. Stat. §§ 7B-1111(a)(1), (2), and (6). At a review hearing held on 22 June 2021, the court found that Mother had obtained housing and employment and completed a new mental health and substance abuse assessment but had not followed through on the recommendations. Additionally, the trial court found that Mother tested positive for cocaine in March and April 2021.

¶ 8 The petitions for termination of parental rights came on for hearing on 12 August 2021. During adjudication, Social Worker C. Foster testified that she worked on Sarah and Heather's cases from February 2018 to January 2020 and on Tina's

case from April 2019 to January 2020. Foster testified that Mother provided paystubs when she was employed, started but did not finish an assessment at a treatment center, was incarcerated on two different occasions, and did not complete parenting classes. Regarding visitation, Foster stated that Mother attended 28 out of 39 visits for Sarah and Heather but explained that her visitations were ceased due to inappropriate behavior, which included feeding Heather age-inappropriate food, utilizing improper hygiene while changing diapers, and live streaming the visits on Facebook. Regarding visitation with Tina, Foster stated that Mother attended 19 out of 25 visits.

¶ 9 Social Worker A. Maddux stated that she had been assigned to the juveniles' cases since January 2020 and as of the hearing, Sarah and Heather had been in DSS custody for 44 months and Tina for 27 months. Maddux testified that Mother had secured appropriate housing, completed parenting classes, and completed an Insights and Recovery course. Maddux also testified that Mother had continued to test positive for illegal substances including testing positive via a hair follicle drug screen on 28 July 2021. Regarding visitation, Maddux stated that Mother had attended 40 out of 68 visits with Tina and occasionally asked about Sarah and Heather, bringing gifts for them at Christmas.

¶ 10 Mother also testified at the hearing. Mother described her struggles with domestic violence, homelessness, and substance abuse. Mother testified that she

went to a rehab program in July 2020 and then lived with her aunt to save money for housing, thereafter renting a three-bedroom townhome beginning in October 2020. Mother explained she had a great job working at a carton folding company and tried to pick up overtime shifts to prepare for her children. Regarding her drug use, Mother testified that she stopped using cocaine in December 2019 but admitted she had a mishap at a party in January 2021 where she took an ecstasy pill she did not know was laced with cocaine. Mother also testified that she had negative urine drug screens in March, April, and June of 2021, but could not explain the positive drug screen from July 2021 and did not believe the positive drug screens to be correct. Additionally, Mother submitted several exhibits showing completion of various programs including a drug education course, parenting classes, and assessments for domestic violence, substance abuse, and mental health.

¶ 11 At the conclusion of adjudication, the trial court found that grounds existed to terminate Mother's parental rights pursuant to N.C. Gen. Stat. §§ 7B-1111(a)(1) and (2), namely neglect and willful unsatisfactory progress towards correcting the conditions that originally led DSS to assuming custody of the juveniles.

¶ 12 During disposition, Social Worker Maddux testified that Sarah, Heather, and Tina were placed in the same foster home and had formed a familial bond with the foster parents and their extended family. Maddux testified that the likelihood of the juveniles being adopted was very high as the current foster parents had expressed

the interest and willingness to adopt the juveniles. Mother testified again, explaining that while she may have failed in the beginning, she was working hard to be a better parent to her children. Additionally, Mother's aunt, family friend, cousin, and 18-year-old daughter testified on her behalf, describing the growth she had exhibited over the last couple of years.

¶ 13 At the conclusion of disposition, the trial court found it was in the best interest of the juveniles to terminate Mother's parental rights. The trial court filed written termination orders on 31 August 2021.

¶ 14 Mother filed timely notice of appeal on 17 September 2021.

II. Analysis

¶ 15 Mother's appellate counsel filed a no-merit brief pursuant to Rule 3.1(e) of the North Carolina Rules of Appellate Procedure, indicating he was unable to identify any issues with sufficient merit upon which to base an argument for relief. Per the stipulations of Rule 3.1(e), appellate counsel has delineated two general issues that arguably support relief on appeal for this Court to review: (1) whether the evidence presented at the termination hearing failed to support the findings of fact and whether the findings failed to support the conclusion that grounds for termination existed; and (2) whether the trial court abused its discretion in finding that it was in the juveniles' best interest to terminate Mother's parental rights.

¶ 16 On 30 December 2021, appellate counsel filed the no-merit brief and sent

Mother a copy of the no-merit brief, the record on appeal, and the transcript, as well as a letter explaining Mother's right to file a pro se brief and instructing her how to do so. On 3 March 2022, although outside of the thirty days provided by Rule 3.1(e) for filing a pro se brief, Mother filed a letter with the Court acknowledging the mistakes she has made, listing the various training and education programs she has completed, sharing the progress she has made towards sobriety and stability, and expressing her love for the juveniles.

¶ 17 In accordance with Rule 3.1(e) and *In re L.E.M.*, 372 N.C. 396, 831 S.E.2d 341 (2019), we have conducted a careful and independent review of the issues identified by appellate counsel as arguably supporting relief on appeal as well as the entire record on appeal. For the reasons delineated below, we have identified no errors by the trial court and agree with appellate counsel that the identified issues arguably supporting relief are meritless.

A. Grounds for Termination

¶ 18 "We review a trial court's adjudication under N.C.G.S. § 7B-1111 to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." *In re E.H.P.*, 372 N.C. 388, 392, 831 S.E.2d 49, 52 (2019) (internal marks and citation omitted). The trial court's conclusions of law are reviewed *de novo*. *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019).

¶ 19 The trial court found that grounds existed to terminate Mother's parental

rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1)—that Mother neglected the juveniles within the meaning of N.C. Gen. Stat. § 7B-101(15)—and N.C. Gen. Stat. § 7B-1111(a)(2)—that Mother willfully failed to make reasonable progress towards reunification. If either ground is supported by findings of fact based on clear, cogent, and convincing evidence, the orders should be affirmed. *In re E.H.P.*, 372 N.C. at 392, 831 S.E.2d at 52. As the trial court explained, the crux of this case is whether Mother has successfully addressed her substance abuse issues and therefore we focus our review on the ground for termination provided in N.C. Gen. Stat. § 7B-1111(a)(2).

¶ 20 Parental rights may be terminated if "[t]he parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile." N.C. Gen. Stat. § 7B-1111(a)(2) (2021). We assess a parent's reasonable progress up to the date of the termination hearing. *In re A.C.F.*, 176 N.C. App. 520, 528, 626 S.E.2d 729, 735 (2006). "[A] trial judge should refrain from finding that a parent has failed to make reasonable progress in correcting those conditions which led to the removal of the juvenile simply because of his or her failure to fully satisfy all elements of the case plan goals." *In re B.O.A.*, 372 N.C. 372, 385, 831 S.E.2d 305, 314 (2019) (internal marks and citations omitted). However, "a finding that a parent acted willfully for purposes of N.C.G.S. § 7B-1111(a)(2) does not require a

showing of fault by the parent. A respondent's prolonged inability to improve her situation, despite some efforts in that direction, will support a finding of willfulness regardless of her good intentions." *In re J.S.*, 374 N.C. 811, 815, 845 S.E.2d 66, 71 (2020) (cleaned up).

¶ 21 Here, the trial court made findings of fact indicating the following: (1) Sarah and Heather had been in DSS custody for 44 months and Tina had been in DSS custody for 28 months; (2) the trial court never concluded at a review hearing that Mother had made reasonable progress towards regaining custody; (3) Mother failed to submit to all drug screens requested by DSS, failed to submit to all court ordered drug screens, tested positive for cocaine via hair follicle screenings in August 2020 and July 2021, and failed to submit to new substance abuse assessments after positive drug screens and/or failed to follow all recommendations; and (4) Mother testified that she had not used cocaine since December 2019, with the exception of using ecstasy she did not know was laced with cocaine in January 2021, but could not provide a logical explanation for her positive drug screens.

¶ 22 Based on our independent review of the record, these findings are supported by clear, cogent, and convincing evidence.[4] We also conclude that the trial court's

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[4] Ordinarily, in a case where a full merits-based brief is filed, findings of fact that are unchallenged on appeal "are deemed supported by competent evidence and are binding on appeal." *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58 (2019). However, per the directive

findings of fact support its conclusion that grounds exist to authorize the termination of Mother's parental rights due to willful failure to make reasonable progress towards correcting the conditions—in particular, substance abuse—which originally led to the removal of the juveniles. N.C. Gen. Stat. § 7B-1111(a)(2) (2021). While Mother has taken genuine steps toward stability, as evidenced by her securing and maintaining good housing and employment, her prolonged inability to resolve her issues with substance abuse, as evidenced by her positive cocaine drug screens, the most recent of which took place on 28 July 2021, supports a finding of willfulness.

B. Termination of Mother's Parental Rights

¶ 23 We review a trial court's assessment at disposition of whether terminating parental rights is in the child's best interests for abuse of discretion. *In re E.H.P.*, 372 N.C. at 392, 831 S.E.2d at 52. "Under such review, a trial court's decision will remain undisturbed unless we determine that it is manifestly unsupported by reason or it so arbitrary that it could not have been the result of a reasoned decision." *In re A.K.*, 380 N.C. 16, 21, 2022-NCSC-2, ¶13 (internal marks and citation omitted).

¶ 24 At the dispositional stage, the trial court is required to consider and make

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of our Supreme Court in *In re L.E.M.*, in a no-merit brief appeal, in which all findings of fact are automatically rendered "unchallenged" on appeal by virtue of filing a no-merit brief, we nevertheless conduct a full review of the record to ensure the trial court's findings of fact are indeed supported by clear, cogent, and convincing evidence. *See In re L.E.M.*, 372 N.C. 396, 403, 831 S.E.2d 341, 345; *In re A.K.*, 380 N.C. 16, 21, 2022-NCSC-2, ¶12. We conduct this review to ensure "that orders depriving parents of their fundamental right to parenthood are given meaningful appellate review." *In re L.E.M.*, 372 N.C. at 402, 831 S.E.2d at 345.

written findings of fact regarding the following statutory factors in determining whether termination of parental rights is in a child's best interest:

> (1) The age of the juvenile.
>
> (2) The likelihood of adoption of the juvenile.
>
> (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
>
> (4) The bond between the juvenile and the parent.
>
> (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
>
> (6) Any relevant consideration.

N.C. Gen. Stat. § 7B-1110(a) (2021).

¶ 25 Here, the trial court made factual findings pertaining to each statutory factor: (1) that Sarah was five-years-old, Heather was four-years-old, and Tina was two-years-old at the time of the hearing; (2) the juveniles' foster parents had expressed a desire to adopt the juveniles and therefore the likelihood of adoption was high; (3) adoption became the permanent plan for Sarah and Heather in January 2019 and for Tina in May 2020, and terminating Mother's parental rights would aid in accomplishing that plan; (4) Sarah and Heather's bond with Mother had diminished after Mother's visitation rights were suspended two years prior, and Tina's bond with Mother had diminished as Mother had not attended all visitations; and (5) the

juveniles had a parental-type bond with their foster parents who had provided them with a loving and stable home. These findings were all supported by competent evidence presented at the hearing.

¶ 26 Here, we perceive no abuse of discretion in the trial court's determination that terminating Mother's parental rights was in the juveniles' best interests. The trial court gave serious consideration to the progress Mother had made while weighing the statutory factors and appreciating that the juveniles deserve permanency. The trial court was sensitive to Mother's efforts while adhering to the principle that it is the juveniles' best interests that must guide disposition. Accordingly, we conclude that the trial court's decision was neither arbitrary nor unsupported by reason and affirm the trial court's order on disposition.

III. Conclusion

¶ 27 Having undertaken and completed a careful and independent review, we are satisfied that the trial court's orders are supported by clear, cogent, and convincing evidence and based on proper legal grounds. Accordingly, for the reasons stated above, we affirm the trial court's orders terminating Mother's parental rights to the juveniles.

AFFIRMED.

Judges DIETZ and GRIFFIN concur.

Report per Rule 30(e).